

## **EXHIBIT D**

### **SECTION 8 – GENERAL LEGAL MATTERS**

**8.1. RIGHTS TO PROPOSALS AND SUPPORTING MATERIALS:** All Proposals and related information provided by Respondents shall become the property of the City when received and shall not be returned to the Respondent. However, in the event any Respondent has a documentable statutory or common law intellectual property right (e.g., patent, copyright, trademark, service mark, etc.) in any part of the Respondent's Proposal or supporting materials which is or are not otherwise in the public domain, the submission of the Respondent's Proposal shall not be deemed or construed as a waiver, release, or transfer to the City of the Respondent's intellectual property rights.

#### **8.2. PUBLIC RECORDS; CONFIDENTIAL INFORMATION:**

**8.2.1. Application of Freedom of Information Act After Award:** Following the selection of and the execution of a Contract with the Successful Respondent, if any, all Proposals will be available to the public upon receipt of a valid Freedom of Information Act ("FOIA") (5 ILCS 140/1 et seq.) request and other applicable laws and rules except as provided below.

**8.2.2. Confidential Information:** A Respondent may not designate an entire proposal as confidential in order to avoid having it produced in response to the City's receipt of a request for information under the Freedom of Information Act (5 ILCS 140/1 et seq., "FOIA"). If a Respondent believes that it has a lawful basis for designating certain information in the Respondent's Proposal as confidential, proprietary or trade secret, as defined in the Illinois Trade Secret Act (765 ILCS 1065/1 et seq.), the Respondent must specifically label each page of the Proposal that contains such information with a legend stating: "CONFIDENTIAL INFORMATION." The Respondent must also provide sufficient information to the City to establish the confidentiality of the information labeled as such since the City will have no obligation to ascertain whether such information is in fact exempt from production under FOIA. Respondent's request for confidential treatment of information in a Proposal shall not supersede the City's legal obligations under FOIA.

**8.2.3. Confidential Proposals:** The City will neither accept nor consider any Proposal which indicates that it should be treated confidential, proprietary or trade secret in its entirety.

**8.2.4. Submission of Confidential Information:** If a Respondent requests that a portion of its Proposal be treated as confidential, proprietary or trade secret, the Respondent must submit an additional copy of the Proposal with that information deleted. This copy must state the general nature of the material deleted and shall retain as much of the Proposal as possible.

**8.2.5. Costs of Claiming Confidentiality:** Each Respondent shall be responsible for any costs which the City incurs in defending a request for Proposal information which the Respondent has marked as “CONFIDENTIAL INFORMATION.” In the event that the City receives a FOIA request which seeks disclosure of that portion of a Proposal which contains information designated as confidential and the Respondent requests the City to withhold that information from disclosure, the Respondent shall cooperate with the City to the degree necessary for the City to assert the appropriate FOIA exemption when responding to the FOIA requester and the Illinois Attorney General’s Office, as the case may be.

**8.2.6. Intellectual Property Rights of Others:** By submitting a Proposal, the Respondent represents and warrants that anything contained in the Proposal does not violate any intellectual property right (e.g., patent, copyright, trademark, service mark, etc.) owned by any other person.

**8.3. COSTS OF SUBMITTING PROPOSAL:** The Respondent shall be responsible for any and all costs and expenses in connection with his/her preparation and submission of his/her Proposal.

**8.4. LAWFULNESS OF SUBMISSION OF PROPOSAL:** By submitting his/her Proposal, the Respondent represents and warrants that the Respondent –

**8.4.1. No Bid Rigging:** Has not engaged in any unlawful bid rigging, price fixing or group boycott with any other Respondent or third person.

**8.4.2. No Federal or State Violations:** Has not violated any state or federal law governing the subject of that which is sought by the Request.

**8.4.3. Direct Interest in Contract:** Is the only person that will have a direct interest in the Contract, if any is awarded.

**8.4.4. No Bribery:** Has not made any effort to coerce or bribe any City elected or appointed official or employee to award the Contract to the Respondent. Has not undertaken any effort to provide the City with the Specifications used in this solicitation document.

**8.5. TAXES; AUTHORIZATIONS:**

**8.5.1. City Tax Exemption:** By law, the City is exempt from paying federal excise tax, state and local retailers' occupation tax, state and local service occupation tax, use tax, service use tax, and sales tax. The City's tax-exempt number will be furnished upon the Successful Respondent's request.

**8.5.2. Authorizations:** Within three (3) business days of executing a Contract, if any is to be executed, the Successful Respondent, at its expense, shall provide the City with all necessary permits, licenses, and certificates required to satisfy the obligations to which the Successful Respondent will be expected to assume by entering into a Contract with the City. The Successful Respondent shall comply with all requirements of and shall keep in full force and effect all such permits, licenses, and certificates throughout its performance of the Contract.

**8.6. USE OF CITY'S NAME:** No Respondent, including the Successful Respondent, if any, shall use the City's name or logo in any form of advertising without the City's prior written permission.

**8.7. CONTRACT DOCUMENTS:** The Successful Respondent shall be required to enter into a Contract with the City.

**8.7.1. Successful Respondent Supplied Contract:** If a Respondent, if selected as the Successful Respondent, expects the City to enter into an agreement using the Respondent's template form of agreement, the Respondent must supply a copy of that agreement form along with his/her Proposal. Nothing herein shall require the City to accept the terms of such agreement form.

**8.7.2. City-Supplied Contract Form:** If a Respondent, if selected as the Successful Respondent, does not intend to ask the City to use his/her agreement form, the City shall provide the Successful Respondent with the terms of agreement. The Contract terms may be contained in a wholly separate document and/or those parts of the City's Request and Successful Respondent's Proposal to which the City and Successful Respondent agree.

**8.7.3. Final Contract Terms:** Regardless of whether the Successful Respondent's or the City's agreement form is to be used, where appropriate, the Successful Respondent and the City will negotiate in good faith final terms of agreement. Any final Contract entered into by and between the City and the Successful Respondent shall contain the following:

**8.7.3.1. Price Quote:** The Successful Respondent's price quoted as contained in his/her Proposal or as further negotiated by and between the Respondent and the City which, in all events, shall include the all costs of delivery, set up, testing, instruction, and warranties, if any.

**8.7.3.2. Payment:** Terms of payment by the City to the Successful Respondent.

- 8.7.3.3. Specifications:** The Specifications provided for in this Request as may be modified by agreement between the City and the Successful Respondent.
- 8.7.3.4. Default and Cure:** Terms covering the Successful Respondent's or the City's default, if any, with rights to cure such default.
- 8.7.3.5. Representation of Authority:** If the Successful Respondent is a corporation, limited liability company or partnership, there must be included a representation that the person signing the Contract on behalf of the Successful Respondent is authorized to do execute the Contract
- 8.7.3.6. Costs of Negotiation:** The City and the Successful Respondent to bear their respective costs of negotiating and executing the final Contract between them.
- 8.7.3.7. Indemnification:** The Successful Respondent's indemnification, hold harmless, and duty to defend the City in the event of any bodily injury or property damage caused the Successful Respondent's intentional, willful, wanton, grossly negligent, or negligent wrongful act or omission in performing his/her duties as provided in the Contract.
- 8.7.3.8. Warranties:** Any warranties which were submitted by the Respondent along with his/her Proposal including any modifications thereof agreed to by the City and the Successful Respondent.
- 8.7.3.9. Insurance Requirements:** The City will specify the minimum insurance coverages required to be in place, with the City named as an additional insured, where appropriate.
- 8.7.3.10. EEO Representations:** Affirmation of the EEO representations which the Successful Respondent provided as part of his/her Proposal.
- 8.7.3.11. Termination of Contract:** Means of terminating the Contract by the City or the Successful Bidder and the non-terminating party's rights and remedies.

**8.7.3.12. Governing Law:** The laws of the State of Illinois shall apply to any interpretation, construction, breach and enforcement of the Contract. Any action to interpret, construe, for breach, and/or enforcement of the Contract shall be initiated and maintained in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois or, if applicable, the United States District Court for the Central District of Illinois.

**8.7.3.13. Additional Terms:** Such other terms, if any, as the City and the Successful Respondent shall agree.

**8.8. Termination of Solicitation Process/No Rights Created:** The City reserves the right to terminate the solicitation and selection process at any time, to reject any or all Proposals, and to award a Contract in the best interest of the City. Nothing herein shall be deemed to create any right or interest in any arrangement between the City and any Respondent unless and until the City and the Successful Respondent have entered into and executed a Contract. Nothing herein shall be deemed as obligating the City to accept a Proposal based solely on lowest price.

**8.9. Prevailing Wage Act/ Davis-Bacon Act:**

**8.9.1. Prevailing Wage Act:** Any Contract entered into between the Successful Respondent and the City will be subject to the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.), as amended to date, unless superseded by the Davis-Bacon Act or otherwise stated. Pursuant to the Illinois Prevailing Wage Act, the City has determined prevailing rates for various classifications of workers and the latest determination of these rates is included as part of this Proposal. The Respondent shall pay its workers not less than the prevailing rates so determined and comply with the Act's requirements, including, but not limited to, the keeping of accurate records showing the names and occupation of all laborers, workers and mechanics employed on the work if a Contract is signed. The records shall show the actual hourly wages paid to each such person. Should the rates change during the Contract period, the Respondent shall pay its workers not less than the rates in effect.

**8.9.2. Davis-Bacon Act:** To the extent it is applicable, the Respondent shall comply with the federal Davis-Bacon Act rather than the Illinois Prevailing Wage Act referred to above.

**8.10. Affirmative Action:**

**8.10.1. Compliance with City Ordinance:** If the Contract will be over \$25,000 and provides for construction work (which may include labor, material, supplies and/or equipment) or if the Contract will be over \$30,000 and provides for the performance of services or the delivery of goods but not

construction work, the Successful Respondent shall comply with the Discrimination in Employment by Contractors and Respondents Ordinance (Urbana City Code Sec. 2-119 as amended). Pursuant to the Ordinance, the Respondent must submit to the City's Commission on Human Relations the statement provided for in Urbana City Code Section 2-119(b)(1)-(7) on the form provided by the City. Inquiries concerning this requirement may be directed to the City's Human Relations Officer at 400 S. Vine Street, Urbana, IL 61801 or by telephone at 217 384-2466 or by e-mail at hro@urbanaininois.us. Further, the Successful Respondent shall comply with the City's Human Rights Ordinance (Urbana City Code Sec. 12-1 *et seq.*).

**8.10.2. Veterans Preference:** If this Proposal involves construction, the Successful Respondent shall comply with the Veterans Preference Act (330 ILCS 55/0.01 *et seq.*) and the Employment of Illinois Workers on Public Works Act (30 ILCS 570- 0.01 *et seq.*) in the employment and appointment to fill positions in the construction, addition to, or alteration of any public works.